

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: :
 : Case No. 06-61796
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
 :
Debtors. : Chapter 11
 :
 : Honorable Russ Kendig
----- X

**MOTION OF DEBTORS AND DEBTORS
IN POSSESSION, PURSUANT TO SECTION 105(a), 363
AND 541 OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER
CONFIRMING AUTHORITY TO PAY PREPETITION SALES AND USE TAXES**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), hereby move (the “**Motion**”), pursuant to sections 105(a), 363 and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order authorizing the payment of prepetition sales and use taxes (collectively, “**Sales and Use Taxes**”) to the appropriate taxing authorities (collectively, the “**Taxing Authorities**”) in the ordinary course of the Debtors’ businesses. In support of the Motion, the Debtors refer to and rely upon the Affidavit of Joseph Mallak in Support of Chapter 11 Petitions and First Day Motions, filed contemporaneously herewith (the “**Mallak Affidavit**”), and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(1) _____

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363 and 541 of the Bankruptcy Code.

BACKGROUND

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have requested that the Cases be jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

A. Summary of Capital Structure and Current Business Operations

6. Creative Engineered Polymer Products, LLC, (“**CEPP**”) is a limited liability company formed under the laws of the State of Ohio. CEPP is wholly owned by CEP Holdings, LLC (“**Holdings**”), a privately-held limited liability company formed under the laws of the State of Ohio. Holdings is a holding company whose sole asset is its membership interests in CEPP. CEPP has three subsidiaries: (i) Composite Parts Mexico S.A. de C.V. (the “**CEP Mexico**”), a Mexican corporation which is 99.9% owned by CEPP and .01% owned by non-debtor Reserve Capital Group, Ltd; (ii) Thermoplastics Acquisition, LLC (“**Thermoplastics**”), an Ohio limited liability company which is wholly owned by CEPP and is a debtor in these cases; and (iii) CEP Latin America, LLC (“**CEP LA**”), a non-debtor Ohio limited liability company which is wholly owned by CEPP. CEP LA was never funded and has no operations or debt. The principal place of business of the Debtors is 3560 West Market Street, Suite 340, Akron, Ohio 44333.

7. The Debtors operate 10 manufacturing plants in Ohio, Michigan, Alabama, South Carolina and Mexico, including a plant in Canton, Ohio. CEPP operates six plants in Ohio,

Michigan and Alabama. Non-debtor CEP Mexico operates two plants in Mexico. Thermoplastics operates one plant in Ohio and one in South Carolina.

8. CEP and its debtor subsidiaries are custom molders and extruders of rubber and plastic products, primarily for the OEM automotive market. The Debtors have achieved a unique position as preferred suppliers of high quality products to major customers, including General Motors, Delphi Corporation, Visteon, Nissan, Daimler-Chrysler, Honda and GKN Automotive. CEP has maintained this position as a leader in the marketplace through innovative manufacturing techniques and by continuously improving its broad base of material and process technology.

9. Gross sales for the Debtors' businesses are projected to be approximately \$190 million for fiscal 2006. The Debtors' nearly 1,106 employees manufacture the Debtors' products at ten strategically located manufacturing facilities in Ohio, Michigan, South Carolina, Alabama and Mexico.² The Debtors also maintain a Technical Center in Livonia, Michigan which offers design assistance and program management services for the Debtors' businesses.

B. Prepetition Debt Structure

10. The Debtors were formed as part of two separate purchase transactions on August 16, 2005 and December 20, 2005, respectively. As part of the August 16, 2005 transaction, the CEPP and CEP Mexico businesses were purchased from the Carlisle Companies. In conjunction with the transaction, CEP Acquisition LLC n/k/a CEPP entered into a Loan and Security Agreement, dated as of August 16, 2005 (the "**Prepetition CEPP Credit Agreement**") with Wachovia Capital Finance Corporation (Central) ("**WCFC**"), as both Agent and Lenders thereunder. The Prepetition CEPP Credit Agreement provided two term loans and a revolving

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² CEP Mexico, a non-debtor, produces high quality plastic products at two factories in Mexico.

credit facility to CEPP in the maximum amount of \$45 million (collectively, the “**CEPP Prepetition Loan**”). The CEPP Prepetition Loan is secured by substantially all the assets of CEPP, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, real property, accounts receivable, other personal property and proceeds thereof (collectively, the “**Prepetition CEPP Collateral**”). As of the Petition Date, the amount outstanding under the CEPP Prepetition Loan was not less than \$21,693,507.60 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition CEPP Credit Agreement and applicable law).

11. As part of the December 20, 2005 transaction, CEPP purchased the Thermoplastics business from Parker Hannifan Corporation. In conjunction with the transaction, Thermoplastics entered into a Loan and Security Agreement, dated as of December 21, 2005 (the “**Prepetition Thermoplastics Credit Agreement**” and together with the Prepetition CEPP Credit Agreement, the “**Prepetition Credit Agreements**”) with WCFC, as both Agent and Lenders. The Prepetition Thermoplastics Credit Agreement provided a term loan and a revolving credit facility to Thermoplastics in the maximum amount of \$5 million (collectively, the “**Thermoplastics Prepetition Loan**” and together with the CEPP Prepetition Loan, the “**Prepetition Loans**”). The Thermoplastics Prepetition Loan is secured by substantially all the assets of Thermoplastics, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, accounts receivable, other personal property and proceeds thereof (collectively, the “**Prepetition Thermoplastics Collateral**” and together with the Prepetition CEPP Collateral, the “**Prepetition Collateral**”). As of the Petition Date, the amount outstanding under the Thermoplastics Prepetition Loan was not less than \$4,219,688.58 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled

under the Prepetition Thermoplastics Credit Agreement and applicable law). The Prepetition Credit Agreements are cross-defaulted and cross-collateralized.

12. Prior to the Petition Date, Visteon Corporation, General Motors Corporation and Delphi Corporation (collectively, the “**Customers**”) and WCFC entered into a Subordinated Participation Agreement dated June 30, 2006 and a First Amendment to Subordination Participation Agreement dated August 18, 2006 pursuant to which the Customers purchased subordinated, last out participation interests (the “**Participation Interests**”) in the Prepetition Loan Facilities. The Customers purchased \$2.9 million of Participation Interests, the proceeds of which were used by the Debtors to fund their operations and the building of the Customers’ parts.

C. Events Leading To The Filing Of These Chapter 11 Cases

13. The Debtors and other automotive suppliers and manufacturers have faced a series of unanticipated operational and market challenges that have adversely affected their operations and cash flows. These challenges have impaired both the Debtors’ suppliers and customers which in turn have severely affected the Debtors’ operations and businesses.

14. With respect to suppliers, the September 2005 hurricanes in the Gulf Coast region have disproportionately damaged manufacturers who rely on plastic resins. Shortly after the hurricanes, the Debtors began experiencing sharp increases in their principal raw materials (plastic resins) which increases were attributable to interrupted refining capacity. With prices already high due to increased global demand, insecurity and supply constraint issues, the hurricanes magnified the rise in the price of crude oil and natural gas. The Debtors have continued to experience significantly higher costs for raw materials.

15. With respect to the Debtors’ customers, the Debtors have been unsuccessful in recovering much of these increases in raw material costs from their customers through price

increases. The structure of the American automotive industry is such that it is difficult for manufacturers such as the Debtors to pass rising material costs on to customers. Faced with rising costs, the Debtors have expended substantial effort in attempting to source cheaper alternatives (such as recycled materials and alternative formulations) for substitution of higher cost materials. Despite these efforts, most of the Debtors' customers have delayed approving these material substitutions. Although the Debtors are now starting to experience success in receiving approvals of the material substitutions, the damage to the Debtors' liquidity is irreversible outside the protections of the Bankruptcy Code.

16. In addition to increased material costs, the general instability of the industry has directly harmed the Debtors' liquidity. For example, the Debtors have been impaired by the bankruptcy filing of several large OEM's, including Delphi Corporation, the Debtors' second largest customer. The bankruptcy filing of Delphi in October 2005 alone resulted in a cash loss to the Debtors of nearly \$1.7 million based on the Debtors' unpaid prepetition claim in that case.

17. In addition to bankruptcy filings in the industry, the general credit downgrade has led to delays and increasingly delinquent customer payments for approved tooling programs. These programs are typically managed and paid for by the Debtors for the benefit of a particular customer which subsequently reimburses the Debtors. The increased delays and failure of customers to pay for these programs have decreased the portion of accounts receivable against which Wachovia will lend under the Prepetition Credit Agreements. This, in turn, has further impaired the Debtors' liquidity.

18. The Debtors have further experienced excess capacity at their plants due to decisions by their customers. For example, GM's transfer from the GMT800 platform to the GMT900 platform has led to substantial idling of capacity. In late 2005, GM started phasing out

the GMT800 platform, a manufacturing platform in which the Debtors were heavily involved. The Debtors have been harmed by this action because (i) the Debtors have significant up front costs invested in the GMT800 platform and (ii) GM has not provided the Debtors with replacement work in the new GMT900 platform. Thus, the Debtors have not recovered their costs associated with the GMT800 platform and are operating at significantly lower capacity at several manufacturing plants due to a failure to receive work under the GMT900 platform.

D. Prepetition Activities

19. In an attempt to create maximum value for the Debtors' creditors, the Debtors worked with the Customers and WCFC to allow the Debtors to formulate a restructuring plan which would reorganize the Debtors outside of a chapter 11 proceeding. As part of this plan, in May 2006 the Debtors entered into a series of forbearance, accommodation and access and security agreements with WCFC and the Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. This window expired September 6, 2006.

20. Given the size and complexity of the Debtors' operations and the continuation of the market circumstances described above, the Customers, WCFC and the Debtors ultimately determined that an out-of-court restructuring was not feasible. Thus, after exploring all options and faced with a severe liquidity crisis, the Debtors have no choice but to commence these cases as the only means of preserving the Debtors as going concerns, and, thus, maximize the value of the Debtors' assets for their creditors.

21. With the aide of this Court and the support of WCFC and the Customers, the Debtors' goal is to stabilize their business operations and financial situation and sell their assets in a manner to maximize value for the Debtors' Creditors. As detailed in the Debtors' DIP

Financing Motion,³ filed contemporaneously herewith, WCFC and the Customers have agreed to provide post-petition financing and cash infusions to the Debtors which financing and cash infusions will fund the Debtors' costs of operations, wind down, restructuring and liquidation until such time that the Debtors' assets are sold pursuant to section 363 of the Bankruptcy Code. The Debtors believe that this course of action will maximize the value of their assets for all creditors.

RELIEF REQUESTED

22. By this Motion, the Debtors respectfully request that the Court enter an order, pursuant to sections 105(a), 363 and 541 of the Bankruptcy Code, authorizing them to pay Sales and Use Taxes to the appropriate Taxing Authorities in the ordinary course of the Debtors' businesses. The Debtors believe that they are current with respect to the payment of their Sales and Use Taxes and that only de minimus amounts of Sales and Use Taxes, if any, are owed on a prepetition basis to the Taxing Authorities.

23. The Debtors, in the ordinary course of their business, incur various tax liabilities, including Sales and Use Taxes. Prior to the Petition Date, the Debtors paid the Sales and Use Taxes as they became due. On average, the Debtors' quarterly obligations for the Sales and Use Taxes, including for certain taxes and duties owed to certain Taxing Authorities, were collectively and approximately \$2,500.00. Nothing contained in this Motion should be construed as impairing, or should be deemed to impair, the Debtors' rights to contest the validity or amount of any Sales and Use Taxes that may be alleged to be due; and the Debtors expressly reserve all of their rights with respect thereto.

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³ The full title of the DIP Financing Motion is CEP Holdings, LLC's Motion for Emergency Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief.

24. Sales and Use Taxes accrue daily in the ordinary course of the Debtors' business, and are calculated based upon statutorily mandated percentages. On a periodic basis, typically quarterly or monthly, the Debtors remit the Sales and Uses Taxes collected during the preceding quarter or month to the Taxing Authorities. The Debtors believe that they are current with respect to the payment of the Sales and Use Taxes. To the extent that there are Sales and Use Taxes owed to the Taxing Authorities, the Debtors believe that such amounts are less than or equal to the collective one month average of approximately \$833.33. Therefore, in an abundance of caution, the Debtors have filed this Motion seeking authority to pay such amounts of Sales and Use Taxes, if any.

25. As described above, the Debtors pay Sales and Use Taxes to the Taxing Authorities on a periodic basis with funds drawn by checks (the "**Checks**") or by means of electronic fund transfers (the "**Electronic Transfers**") depending on the particular Taxing Authority. Prior to the Petition Date, certain Taxing Authorities were sent Checks or Electronic Transfers in respect of such obligations that may not have cleared the accounts at Wachovia Bank, N.A., the bank holding the accounts (the "**Accounts**") through which the Debtors pay their Sales and Use Taxes (the "**Bank**") as of the Petition Date. A list of the Accounts is attached hereto as **Exhibit A**.

26. The Debtors seek authority to pay all prepetition Sales and Use Taxes to the Taxing Authorities, including all such Sales and Use Taxes determined upon audit to be owed for periods prior to the Petition Date. To the extent any Check or Electronic Transfer has not cleared the Bank as of the Petition Date, the Debtors request the Court to authorize the Bank, when requested by the Debtors in their sole discretion, to process, honor, and pay such Checks or Electronic Transfers. To the extent the Taxing Authorities otherwise have not received payment

for all prepetition Sales and Use Taxes owed, the Debtors seek authorization to issue replacement checks, or to provide for other means of payment to the Taxing Authorities, to the extent necessary to pay all outstanding Sales and Use Taxes owing for periods prior to the Petition Date.

27. The Debtors further request that the Bank be authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all Checks or Electronic Transfers drawn on the Debtors' Accounts to pay all prepetition Sales and Use Taxes owed to the Taxing Authorities whether those Checks were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable accounts to make such payments. The Debtors represent that each of these Checks or Electronic Transfers can be readily identified as relating directly to the authorized payment of prepetition Sales and Use Taxes. Accordingly, the Debtors believe that Checks and Electronic Transfers other than those relating to authorized payments will not be honored inadvertently.

BASIS FOR RELIEF REQUESTED

28. Pursuant to sections 105(a), 363 and 541 of the Bankruptcy Code, the Debtors request (a) authorization to pay all prepetition Sales and Use Taxes owed to the Taxing Authorities, including all Sales and Use Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date, and (b) that the Court authorize the Debtors' Bank, when requested by the Debtors in their sole discretion, to honor and process checks and transfers related to such relief.

29. The Debtors submit that the relief requested herein is necessary and appropriate to carry out the provisions of the Bankruptcy Code. Payment of the Sales and Use Taxes in full and on time to the Taxing Authorities is both necessary and in the estates' best interests. Failure to timely pay, or precautionary withholding by Debtors of payment of, the Sales and Use Taxes

likely would cause Taxing Authorities to take aggressive actions, such as the filing of multiple liens and a marked increase in audits which would unnecessarily divert the Debtors' attention from the reorganization process. Prompt and regular payment of the Sales and Use Taxes would avoid any such unwarranted governmental action and disruption.

30. To the extent the Debtors have collected Sales Taxes from their customers, such funds are held in trust by the Debtors for the benefit of the Taxing Authorities and do not constitute property of the Debtors' estates. *See, e.g.*, OHIO REV. CODE ANN. § 5739.03 (“each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale”); *see also Begier v. Internal Revenue Serv.*, 496 U.S. 53 (1990); *Bair v. Dep't of Taxation (In re Bair)*, 302 B.R. 564, 567 (Bankr. N.D. Ohio 2003); *In re B & B Marine Sales & Serv.*, 149 B.R. 465, 467 (Bankr. N.D. Ohio 1992) (sales tax represents trust fund taxes); *In re Wendy's Food Sys., Inc.*, 133 B.R. 917 (Bankr. S.D. Ohio 1991) (same) *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are “trust fund” taxes). The Debtors, therefore, arguably have no equitable interest in such Sales and Use Taxes pursuant to section 541(a) of the Bankruptcy Code and are obligated to remit to the appropriate Taxing Authority all amounts collected from customers. Moreover, because the Sales Taxes are not property of the Debtors' estates, these funds are not available for the satisfaction of creditors' claims.

31. To the extent the Sales and Use Taxes are property of the Debtors' estates under section 541 of the Bankruptcy Code, both the Sales and Use Taxes are afforded priority status under section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(8), *see also Bair*, 302 B.R. at 567 (noting that sales tax was entitled to priority under section 507(a)(8)); *B & B Marine Sales & Serv.*, 149 B.R. at 467 (same). As priority claims, the Sales and Use Taxes must be paid

in full before any general unsecured obligations of the Debtors may be satisfied. The Debtors believe that sufficient assets exist to pay all priority Sales and Use Taxes in full under any plan of reorganization that may ultimately be proposed and confirmed by this Court. Accordingly, the relief requested will only affect the timing of the payment of these priority Sale and Use Taxes and will not prejudice the rights of general unsecured creditors or other parties in interest.

32. To the extent that payment of the Sales and Use Taxes would constitute a use of property outside the ordinary course of business, the payment of these obligations is justified pursuant to section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). If the debtor’s determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 482-483 (Bankr. N.D. Ohio 1992) (a section 363 sale may be authorized when a sound business purpose dictates such action); *In re Federated Dep’t Stores*, 1990 Bankr. LEXIS 122 (Bankr. S.D. Ohio 1990) (section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances, but the debtor must articulate some business justification); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor’s decision be supported by a “sound business purpose”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999). Once a debtor articulates a valid business judgment, “the business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v.*

Van Gorkom, 488 A.2d 858, 872 (Del. 1985)); *In re Engman*, 331 B.R. 277, 289 (Bankr. D. Mich. 2005) (the business judgment rule creates a presumption in favor of the fiduciary). The business judgment rule has vitality in Chapter 11 cases and shields a debtor's management from judicial second-guessing. *In re Integrated Res., Inc.*, 147 B.R. at 650.

33. In addition, the Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a Chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. "It is well established that a bankruptcy court has authority to authorize payment of pre-petition claims where the payment of such claims is necessary to facilitate reorganization." *In re Federated Dep't Stores*, No. 1-90-00130, 1990 Bankr. LEXIS 122, *3 (Bankr. S.D. Ohio Jan. 15, 1990) (citations omitted). For example, under the "necessity of payment" doctrine, a bankruptcy court can exercise its equitable powers to permit the payment of prepetition claims of those parties whose goods or services are critical to the debtor's reorganization. *See id.*; *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (supporting principle that bankruptcy court can authorize payment of pre-petition claims where such payment is necessary to survival of debtor); *In re SIS Corp.*, 108 B.R. 608, 609-10 (Bankr. N.D. Ohio 1989) (recognizing that courts may authorize payments on account of pre-petition claims "premised upon overriding practical and policy reasons"); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931-32 (Bankr. S.D. Ohio 1988) (agreeing in "principle that a bankruptcy court may exercise its equitable powers under section 105(a) to authorize payment of prepetition claims where such payment is

necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”) (citation omitted); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (“[I]f payment of a claim which arose prior to reorganization is essential to the continued operation of the railroad during reorganization, payment may be authorized even if it is made out of corpus”); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *In re Columbia Gas Sys.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (necessity of payment doctrine is applicable where “payment is essential to continued operation of business”); *In re Ionosphere Clubs*, 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (stating that the rationale of the necessity of payment rule corresponds with the paramount goal under Chapter 11 of reorganizing the debtor and that section 105(a) allows the bankruptcy court to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor”) (citation omitted).

34. Furthermore, in some cases, prepayment of such Sales and Use Taxes may actually reduce the amounts ultimately paid to the Taxing Authorities. The rights of other unsecured creditors and parties-in-interest consequently would not be prejudiced if the requested relief is granted, and the Court’s exercise of its equitable powers under section 105(a) of the Bankruptcy Code will not be in derogation of any other provision of the Bankruptcy Code.

35. Finally, pursuant to many state and federal laws, because the Sales and Use Taxes constitute “trust fund” taxes, the Debtors’ officers or directors or other responsible employees could, under certain circumstances, be held personally liable for the payment of such Sales and Use Taxes. *See, e.g., OHIO REV. CODE ANN. § 5739.33.* Therefore, to the extent the Sales and

Use Taxes were incurred by the Debtors before the Petition Date and have not been paid by the Debtors, the Debtors' officers and directors could be subject to lawsuits during the pendency of the Cases. This would be extremely distracting for the Debtors' directors and officers, whose full-time focus must be to devise and implement a successful reorganization strategy for the Debtors. Given the *de minimus* amount of outstanding prepetition Sales and Use Taxes, the Debtors thus submit that it is in their best interests and the best interests of their creditors and consistent with the reorganization policy of the Bankruptcy Code to eliminate the possibility of such time consuming and potentially damaging distractions.

36. Relief similar to the relief requested herein has been granted by courts in this District and elsewhere in other chapter 11 cases. *See, e.g., In re Nexpak Corp.*, No. 04-63816 (RK) (Bankr. N.D. Ohio July 19, 2004); *In re Am. Way Invs. Corp.*, No. 04-42629 (RB) (Bankr. N.D. Ohio June 9, 2004); *In re Waving Leaves, Inc.*, No. 03-66524 (RK) (Bankr. N.D. Ohio Dec. 5, 2003); *In re LTV Steel Co.*, No. 00-43866 (WTB) (Bankr. N.D. Ohio Jan. 16, 2001); *accord In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006); *In re Tower Auto., Inc.*, No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005).⁴

NOTICE

37. Notice of the Motion has been given to (a) the Office of the United States Trustee for the Northern District of Ohio, (b) the Debtors' secured lenders, and (c) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice need be given.

38. Because this Motion presents no novel issues of law and the authorities relied upon are stated herein, the Debtors respectfully request that this Court waive the requirement (1) _____

⁴ Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of these orders will be made available to parties upon request from the Debtors' counsel.

contained in Local Bankruptcy Rule 9013-1(a) that the Debtors file a separate memorandum of law in support of this Motion.

39. Notwithstanding the possible applicability of Rules 6004(h), 7062, 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) or otherwise, the Debtors request the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby.

40. No previous motion for the relief sought herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 20, 2006
Cleveland, OH

CEP HOLDINGS, LLC, et al.,
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.
One of Their Attorneys

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Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

LIST OF ACCOUNTS

BANK ACCOUNTS

Creative Engineered Polymer Products, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028319768	Wachovia Bank, N.A.
Operating Account	(075)2000028319771	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951065699	Wachovia Bank, N.A.

Thermoplastics Acquisition, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028345677	Wachovia Bank, N.A.
Operating Account	(075)2000028345680	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951067600	Wachovia Bank, N.A.

EXHIBIT B

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

----- X
In re: :
: Case No. 06-61796
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
: :
Debtors. : Chapter 11
: :
: Honorable Russ Kendig
----- X

**ORDER, PURSUANT TO SECTIONS 105(a), 363 AND 541 OF THE BANKRUPTCY
CODE, CONFIRMING AUTHORITY TO PAY PREPETITION SALES AND USE TAXES**

Upon the motion (the “**Motion**”)² of CEP Holdings, LLC and its affiliated debtors and debtors-in-possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), for entry of an order authorizing the payment of Sales and Use Taxes; the Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and upon the Mallak Affidavit; and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding, (iii) notice of the Motion was sufficient under the circumstances, and (iv) the legal and factual bases set forth in the Motion, the Mallak Affidavit, and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and after due deliberation and sufficient cause appearing therefore;

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. The Debtors are authorized, in the Debtors' sole discretion, to pay the Sales and Use Taxes to the appropriate Taxing Authorities in the ordinary course of the Debtors' businesses.
3. This Order shall not impair the Debtors' rights to contest the validity or amount of any Sales and Use Taxes that may be alleged to be due.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.
5. The requirement pursuant to Local Bankruptcy Rule 9013-1(a) that the Debtors file a memorandum of law in support of the Motion is hereby waived.
6. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: September ____, 2006
Canton, OH

UNITED STATES BANKRUPTCY JUDGE